IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

CRP.No. 456 of 2006

AGAINST THE ORDER DATED 29/06/2005 IN E.P.28/2006 IN OS.530/1997 of MUNSIFF COURT, MUVATTUPUZHA

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REVN. PETITIONER: 1ST DEFENDANT/1ST JUDGMENT DEBTOR:

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GEORGE, S/O. GEEVARGHESE,
KOLANJIYIL HOUSE, KEERAMPARA VILLAGE,
KEERAMPARA KARA.

BY ADV. SRI.MANOJ P.KUNJACHAN

RESPONDENTS: PLAINTIFF AND DEFENDANTS 2 AND 3:

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1. RADHA, W/O. KRISHNANKUTTY,
RESIDING AT MULANKUNNAM PUTHENPURAYIL,
KOTHAMANGALAM VILLAGE, DO KARA,
FROM MULAMKUNNAM PUTHANPURAYIL,
KEERAMPARA VILLAGE, DO KARA.

2. KRISHNAN KUTTY, S/O. NARAYANAN,
RESIDING AT DO-DO.

3. DAVID. S/O. PAUL, RESIDING AT
THEKKUMKUDIYIL HOUSE, PINDIMANA VILLAGE,
DO KARA, FROM THEKKUMKUDIYIL,
NELLIKKUZHI KARA, ERAMAMALLOOR VILLAGE.

4. MATHEW, S/O. PAUL,
THEKKUMKUDIYIL HOUSE, RAMALLOOR KARA,
KOTHAMANGALAM VILLAGE,
FROM DO- DO.
(R3 and R4 are deleted from the party array vide I.A.562/07 dated 27.2.07)

BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
SRI.P.VISWANATHAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**K.P.BALACHANDRAN, J.**

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C.R.P.NO.456 OF 2006

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Dated this the 27th day of February 2007

**ORDER**

The petitioner is the judgment debtor in O.S.530/97 on the file of the Munsiff's Court, Moovattupuzha. Respondents 1 and 2 were the plaintiffs in the said suit who obtained a decree against the petitioner for recovery of possession of 1.4 cents alleged to have been trespassed by the petitioner. The contention that is advanced before me by the learned counsel for the petitioner is that admittedly the total extent of property which the first respondent/decree holder was having is 7.875 cents only; that he has sold the entire 7.875 cents to one George Sakaria under sale deed no.5/04 dated 29.12.2003 of Sub Registry Office, Kothamangalam and that therefore she cannot seek for recovery of any portion of property from the possession of the petitioner. The counsel for the petitioner has passed on a copy of the said sale deed 5/04 for perusal. It is seen from the recital therefrom that the entire property of 7.875 cents is transferred by the first respondent to George Sakaria for a sale consideration of Rs.24,000/- undertaking that there is no encumbrance at all over

the said property. The fact that 1.4 cents from out of 7.875 cents belonging to her is in the possession of the petitioner had not been disclosed in the document. Therefore it is contended for the petitioner that whatever the petitioner was having is transferred to George Sakaria who in turn has sold it to another 3rd party and that therefore no right is vested for the decree holder to proceed with execution. This revision is filed as the execution court has repelled the above contentions and ordered delivery.

2. It is contended by the learned counsel for respondents 1 and 2 on the strength of the decision in **Banke Behara Lal v. Raghubar Dayal [AIR 1930 Alahabad 380]** and the decision in **Cherukutty v. Velappu [1987 (1) KLT 565]** that impleadment of the assignee is not mandatory or necessary and that the assignor can proceed with execution if the assignee has got confidence in the assignor. It is settled position that even after transfer of the property in dispute the transferor can prosecute the suit or appeal and that for the purpose the transferee need not invariably be made a party. All the same, the contention that is advanced before me by the counsel for the

petitioner is that the decree holder might be able to prosecute the litigation on behalf of the transferee but in the instant case as there is no reference with respect to the existence of the decree in the sale deed and no responsibility is taken up by the decree holder to get delivery of 1.4 cents from the petitioner and to surrender that also to the transferee, the decision cited has no application to the facts of this case and that the decree in favour of the first respondent has become inexecutable at present. I am not prepared to agree to the contentions raised but all the same it is for the execution court to see that undue benefit is not taken by the decree holder who has transferred the property to someone else after the decree.

In the result, while dismissing the petition, I order that the execution shall proceed after impleading also the transferee or the transferees as the case may be and only thereafter delivery shall be effected. This revision is disposed of with the above directions.

**K.P.BALACHANDRAN, JUDGE**

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